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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,012	09/06/2000	Jeffrey Owen Phillips	CUMP.75681	7874

7590 11/19/2002

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EXAMINER
KREMER, MATTHEW J

ART UNIT	PAPER NUMBER
3736	

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/600,012	Applicant(s) PHILLIPS ET AL.	
	Examiner Matthew J Kremer	Art Unit 3736	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☒ The proposed amendment(s) will not be entered because:

   (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☐ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☐ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Continuation of 2. NOTE: The Applicant has amended independent claims 10,21,31, and 36 to include sensors capable of sensing for pH which was not considered when rejecting these claims under 102(b) using references Millar or Knute. Sensors capable of measuring pH were considered in the 103 rejection of claims 16-17, 26-27, and 34 using references Millar and Janese. Applicant's arguments filed 10/28/2002 have been fully considered but they are not persuasive. Applicant argues that the combination of Millar and Janese is improper. Applicant argues that Jansese does not teach that the pH proble is inserted into a patient's brain ventricle. The Applicant fails to take into account that Millar does teach measuring certain parameters in the skull such as chemical content, pressure, hemodynamics, and waveform responses. Janese teaches that pH is of specific interest to medical practitioners and pH fall into the larger categories of possible measurements as discloses by Millar. In response to Applicant's arguments against Janese individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In response to the Applicant's argument that the combination is improper since the monitoring of CSF characteristics inside the body would not be conducive to the treatment of CSF outside the body for returning to the body, the Examiner respectfully disagrees. The monitoring of a patient's condition during a medical procedure is well known. The monitoring of patient's chemistry during treatment would be beneficial for determining when the treatment should be initiated or terminated as well as notify the medical practitioner of any problems that may occur .

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